

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARLENE LALATAG,

Plaintiff,

v.

MONEY FIRST FINANCIAL SERVICES,
INC.; et al.,

Defendants.

2:09-cv-02268-LRH-RJJ

ORDER

Before the court is plaintiff Marlene Lalatag's ("Lalatag") motion to remand filed on December 21, 2009. Doc. #11.¹

I. Facts and Procedural History

On April 5, 2006, Lalatag purchased real property through a loan with defendant Money First Financial Services, Inc. ("Money First"). The loan was secured by a note and deed of trust. Lalatag defaulted on the loan and defendants initiated non-judicial foreclosure proceedings.

On September 23, 2009, Lalatag filed a complaint in state court. Doc. #1, Exhibit A. Defendants removed the action to federal court on the basis of diversity jurisdiction arguing that defendant Patrick Reno ("Reno"), a Nevada resident, is a fraudulently joined defendant and that defendant Money First was a dissolved Nevada corporation when the complaint was filed. Doc. #1.

¹ Refers to the court's docket entry number.

II. Legal Standard

Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

Removal of a case to a United States district court may be challenged by motion. 28 U.S.C. § 1447(c). A federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). On a motion to remand, the removing defendant faces a strong presumption against removal, and bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566-67; *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

III. Discussion

An action based on diversity jurisdiction is “removable only if none of the parties in interest properly joined and served as defendants is a citizen of the state in which such action is brought.” 28 U.S.C. § 1441(b). Here, Lalatag argues that properly joined defendant Reno is a Nevada resident and is therefore a non-diverse defendant defeating diversity jurisdiction. Further, Lalatag argues that defendant Money First was a Nevada corporation at the time she obtained the loan and therefore Money First is also a non-diverse defendant defeating diversity jurisdiction.

In opposition, defendants argue that removal is proper because alleged non-diverse defendant Money First was a dissolved corporation prior to the filing of the complaint and that alleged non-diverse defendant Reno is a fraudulently joined defendant.

A. Money First

Defendants argue that Money First is a dissolved Nevada corporation whose residency cannot be used to defeat diversity because the corporation was dissolved prior to the filing of the

1 complaint.

2 Citizenship of the parties is determined at the time a complaint is filed. *See e.g., Meadows*
3 *v. Bicrodyne Corporation*, 785 F.2d 670 (9th Cir. 1986). Generally, a corporation is deemed to be a
4 citizen of any state in which it has been incorporated and of any state where it has its principal
5 place of business. 28 U.S.C. § 1332(c)(1). However, when an action is filed after a corporate
6 defendant is dissolved, the dissolved corporation's domicile is not determinative of the court's
7 jurisdiction. *See Id.* at 672; *see also, Hoefflerle Truck Sales, Inc. v. DivcoWayne*, 523 F.2d 548-49
8 (7th Cir. 1975).

9 Here, Money First was dissolved as a Nevada corporation on July 20, 2009. Doc. #1,
10 Exhibit G. Lalatag's complaint was filed on September 23, 2009, two months after Money First
11 was dissolved. Therefore, Money First's citizenship shall be disregarded for the purpose of
12 establishing complete diversity.

13 **B. Reno**

14 Defendants argue that individual defendant Reno is a fraudulently joined defendant whose
15 diversity should not be considered for purposes of determining jurisdiction.

16 A fraudulently joined defendant does not "defeat removal on diversity grounds." *Ritchey v.*
17 *Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). Fraudulent joinder "occurs when a plaintiff
18 fails to state a cause of action against a resident defendant, and the failure is obvious according to
19 the settled rules of the state." *Ritchey*, 139 F.3d at 1318; *see also McCabe v. General Foods Corp.*,
20 811 F.2d 1336, 1339 (9th Cir. 1987); *Kruso v. International Tel. & Tel. Corp.*, 872 F.2d 1416,
21 1426-27 (9th Cir. 1989); *Gasnik v. State Farm Ins. Co.*, 825 F.Supp. 245, 247 (E.D. Cal. 1992). In
22 determining whether a cause of action is stated against a non-diverse defendant, courts look only to
23 a plaintiff's pleadings. *Gardner v. UICI*, 508 F.3d 559, 561 n.3 (9th Cir. 2007).

24 Nevada is a notice-pleading jurisdiction which liberally construes pleadings. *Chavez v.*
25 *Robberson Steel Co.*, 584 P.2d 159, 160 (Nev. 1978). The allegations of a complaint are sufficient
26

1 to assert a claim for relief when the allegations “give fair notice of the nature and basis” for a claim.
2 *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 874 P.2d 744, 746 (Nev. 1994).

3 Here, Lalatag vaguely alleges (by referencing all defendants) that Reno took part in a
4 conspiracy to wrongfully foreclose and deprive her of her property. To establish a claim for civil
5 conspiracy, a plaintiff must allege: (1) the commission of an underlying tort; and (2) an agreement
6 between the defendants to commit that tort. *GES, Inc. v. Corbitt*, 21 P.3d 11, 15 (Nev. 2001).
7 Further, the cause of action must be pled with particular specificity as to “the manner in which a
8 defendant joined in the conspiracy and how he participated in it.” *Arroyo v. Wheat*, 591 F. Supp.
9 141, 144 (D. Nev. 1984).

10 Here, the court finds that the allegations in the complaint do not set forth any claim or cause
11 of action against Reno. The complaint is devoid of any specific action by Reno other than his
12 changing the locks on her property after she defaulted on the her loan obligations. Further, there are
13 no specific allegations as to how Reno joined in the conspiracy, how he participated in the
14 conspiracy, or what actions he took to further the conspiracy.

15 Accordingly, the court finds that Lalatag’s complaint fails to state a claim against Reno
16 under the appropriate pleading standards and, therefore, Reno is a fraudulently joined defendant
17 whose citizenship does not defeat the exercise of diversity jurisdiction. *See Ritchey*, 139 F.3d at
18 1318. Therefore, the court shall deny Lalatag’s motion to remand.

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20 IT IS THEREFORE ORDERED that plaintiff’s motion to remand (Doc. #11) is DENIED.

21 IT IS SO ORDERED.

22 DATED this 20th day of July, 2010.



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25 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE